

EXHIBIT D

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF DELAWARE

4 - - -

5
6 IN RE: ADAMS GOLF, INC. :
7 SECURITIES LITIGATION :

8
9 ORAL DEPOSITION

10 OF

11 EDWARD NECARSULMER, III

12 Monday, August 7, 2006

13 - - -

14 Oral deposition of EDWARD NECARSULMER,
15 III, held at the offices of SIMPSON THACHER &
16 BARTLETT, LLP, 425 Lexington Avenue, New York,
17 New York, commencing at 12:08 p.m., reported
18 by Pamela Harrison, RMR, CRR, CSR and Notary
19 Public.

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22
23 RSA/VERITEXT COURT REPORTING COMPANY

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Direction to Witness Not to Answer:
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Request for Production of Documents:
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EDWARD NECARSULMER, III

MR. LEWIS: The stipulations that
we have been proceeding under, as I
understand it, are waiving, sealing,
certification, and filing of the
transcript, and otherwise proceeding
under the federal rules.

MR. GLUCKOW: Give me those
again.

MR. LEWIS: Sealing.

MR. GLUCKOW: Right.

MR. LEWIS: Certification.

MR. GLUCKOW: Okay.

MR. LEWIS: And filing.

MR. GLUCKOW: Okay.

MR. LEWIS: Some of which
probably are already mooted by the
latest federal rules.

MR. GLUCKOW: Right.

MR. LEWIS: And I suppose you
want to reserve read and sign for
Mr. Necarsulmer?

MR. GLUCKOW: Exactly. Yes.

THE WITNESS: Perfect.

2 (Pages 2 to 5)

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 2 variables. Some of the ones you've
 3 mentioned are variables -- are valid
 4 ones, but there are -- just the
 5 existence of the fact that it was a
 6 fast growing company or it was a new
 7 company would not be enough for me to
 8 direct the team to do something
 9 different.

10 BY MR. LEWIS:

11 Q. What variables, if any, would
 12 cause you to direct the team to do something
 13 different in due diligence?

14 MR. GLUCKOW: I'm going to object
 15 to the form and object on the ground
 16 that it's vague and ambiguous and quite
 17 overbroad.

18 But you can answer.

19 THE WITNESS: I mean it's a
 20 situation-by-situation issue. I think
 21 that -- and I can only, you know,
 22 really respond to it anecdotally if I
 23 can think of some appropriate
 24 anecdotes. But I guess my point is,
 25 without belaboring this, is you look at

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 2 each situation and hopefully -- you
 3 know, if you are managing the process,
 4 you look at each situation and
 5 hopefully you figure out, you know,
 6 what you need to do to satisfy your
 7 commitment committee, yourself, and the
 8 marketplace. And there are really no
 9 other rules specific -- you know,
 10 templates I can honestly look at you
 11 and offer beyond that.

12 BY MR. LEWIS:

13 Q. Have you ever had the experience
 14 of adjusting the due diligence that you were
 15 conducting on a company because the company had
 16 management that had not had long experience in
 17 running a public company?

18 A. Yes.

19 Q. And why did you do that?

20 A. Well, because simply as a matter
 21 of mechanics. In many cases if a company had
 22 done other offerings or was -- let's say had
 23 done other offerings or had significant -- had
 24 done private equity financings or other
 25 transactions, typically they might be more

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1 EDWARD NECARSULMER, III
 2 organized in terms of your ability to get
 3 documents and things that were on point that
 4 would go right to your organizational outline,
 5 where if they hadn't, you might have to really
 6 help them set up the process.

7 Q. Would you agree that in an
 8 initial public offering there is a strong
 9 affirmative duty of disclosure?

10 MR. GLUCKOW: Object to the
 11 form. Vague and ambiguous. Calls for
 12 a legal conclusion.

13 You can answer.

14 THE WITNESS: Yes.

15 BY MR. LEWIS:

16 Q. Would you agree that in
 17 conducting due diligence it is necessary for the
 18 due diligence team to continue its investigation
 19 of the issuer up to and including the effective
 20 date of the registration statement?

21 A. Yes.

22 Q. And a due diligence
 23 investigation would be inadequate if the
 24 underwriter did not do that?

25 MR. GLUCKOW: Object to the

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1 EDWARD NECARSULMER, III
 2 form. It calls for a legal conclusion.
 3 You can answer.

4 THE WITNESS: I mean, the easy
 5 answer is yes, but -- well, okay, let
 6 me just leave it at yes.

7 BY MR. LEWIS:

8 Q. Is it your understanding as a
 9 non-lawyer that one of the duties of
 10 underwriters is to deal fairly with the
 11 investing public?

12 MR. GLUCKOW: Object to the form.

13 You can answer.

14 THE WITNESS: Absolutely.

15 BY MR. LEWIS:

16 Q. Isn't that sometimes referred to
 17 as the shingle theory?

18 A. I'm not familiar with that.

19 Q. I take it from your initial
 20 report that one of your beliefs is that an
 21 underwriter has an obligation to conduct a
 22 reasonable investigation in an IPO?

23 A. Yes.

24 Q. And there is a long tradition
 25 since the securities laws were enacted in the

16 (Pages 58 to 61)

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1 EDWARD NECARSULMER, III
2 '30s of underwriters conducting due diligence
3 investigations?

4 MR. GLUCKOW: Object to the
5 form. Vague and ambiguous.

6 You can answer.

7 THE WITNESS: Yes.

8 BY MR. LEWIS:

9 Q. To your knowledge, how far back
10 in time have due diligence investigations been
11 conducted by underwriters?

12 A. I think they were formalized by
13 the 33 Act, but I don't go back quite that far,
14 but it's certainly my understanding that
15 particularly, you know, throughout history, you
16 know, you committed your own capital to a
17 greater extent I think than -- now things come
18 full cycle, but in the beginning I think people
19 did due diligence as, you know -- it's my
20 understanding that a lot of due diligence --
21 what due diligence was done was, in fact, you
22 know, a matter of, you know, of self-protection
23 as opposed to any responsibility -- as opposed
24 to exclusively a responsibility to, you know,
25 investors.

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1 EDWARD NECARSULMER, III
2 Q. Did your work in the securities
3 industry begin in 1967 with Hallgarten?

4 A. Correct.

5 Q. In the time that you've been in
6 the industry, have you become aware of any
7 changes in practical standards for due diligence
8 investigations?

9 MR. GLUCKOW: Objection. Vague
10 and ambiguous. Overbroad.

11 You can answer.

12 BY MR. LEWIS:

13 Q. Let me reframe the question.

14 Have you become aware of
15 changes in practice with respect to due
16 diligence investigations over the time since
17 1967 that you've been employed in the
18 industry?

19 MR. GLUCKOW: The same objection.
20 You can answer.

21 THE WITNESS: None to the basic
22 tenets of how the business or the
23 process is done. I think one of the
24 main changes that I've seen is that to
25 the extent that the managing

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1 EDWARD NECARSULMER, III
2 underwriter has taken an even larger
3 responsibility or has been delegated --
4 I don't like the word delegated, but
5 has been delegated a responsibility by
6 the other comanagers to a greater
7 extent.

8 And the other -- if I can just
9 illuminate. The process has gotten
10 better to the extent that investment
11 banks began to specialize in either
12 certain industries or had groups that
13 did certain industries; whereas, in my
14 life, everybody was a generalist and so
15 that if you were doing a
16 telecommunications deal, it would be
17 done by the telecommunications group in
18 Lehman Brothers or Goldman Sachs or
19 something, who really became quite
20 expert.

21 I know we had a significant
22 technology practice and management
23 would often tell me that some of the
24 people in that group are as
25 knowledgeable -- not as they were, of

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1 EDWARD NECARSULMER, III
2 course, but as their competitors were
3 about the business.

4 MR. GLUCKOW: I think we've been
5 going a little bit over an hour. If
6 there's a point in your outline where
7 we could take a short break.

8 MR. LEWIS: We can take it right
9 now.

10 MR. GLUCKOW: That would be
11 great.

12 (A recess was had from 1:18 p.m.
13 to 1:26 p.m.; and then the proceedings
14 continued as follows:)

15 BY MR. LEWIS:

16 Q. Mr. Necarsulmer, outside of this
17 litigation, before you did your work in this
18 case, did you ever hear it said that
19 underwriters were required to act as a prudent
20 man would in the management of his own property?

21 MR. GLUCKOW: Those words?

22 MR. LEWIS: Yes.

23 THE WITNESS: I've certainly
24 heard of the prudent man rule, but I
25 thought it referred to trust companies

17 (Pages 62 to 65)